S. B. CIVIL SECOND APPEAL NO. 39/2007
(Smt.Shanti Devi v. Hemraj & Another)

Date of Order: :08-02-2007

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.C.P.Soni, for appellant.
Mr.Rakesh Arora, for respondents.

Heard learned counsel for the parties.

The appellant-tenant is aggrieved against the concurrent findings of facts recorded by the two courts below on the question of personal bona fide necessity of the plaintiff and dilapidated condition of the suit premises, on the basis of which, the two courts-below passed the decree of eviction against the appellant-tenant.

Learned counsel for the appellant vehemently submitted that the trial Court has not framed the issue about the comparative hardship and when application was submitted before the First Appellate Court for framing of the issue, on question of comparative hardship, that application was dismissed by the First Appellate Court summarily. It is also submitted that the building is not in dilapidated condition and the plaintiff is not in need of the premises in question.

I considered the submissions of the learned counsel for the appellant and perused the reasons given by the two courts

below. Though specific issue about the comparative hardship was not framed, but the trial Court decided this question specifically by mentioning that it is necessary to determine the comparative hardship in a suit for eviction filed against the tenant and thereupon recorded the finding in favour of landlord. It is admitted case of even defendant that the plaintiff has no other premises and it is also admitted by one of the witnesses of the defendant that the building is in dilapidated condition. In view of the above, the findings of facts are based on evidence and no substantial question of law is involved in this appeal. Hence, the appeal is liable to be dismissed.

At this stage, learned counsel for the appellant prays for time for vacating the suit premises on the ground that he is in occupation as a tenant in the suit shop since about 20 years.

I considered this prayer of the learned counsel for the appellant. Looking to the facts of the case mentioned above, this Court is of the view that the appellant is granted time upto 31st May, 2007 to vacate the suit premises.

Therefore, it is ordered that in case the appellant furnishes a written undertaking before the trial Court within a period of one month from today that he shall hand over the vacant possession to the landlord by or before 31st May, 2007 and shall not part with the possession or sublet the suit premises

during this period and shall pay all the arrears of rent and decretal amount, if due, and cost of the suit and cost of first appeal within a period of one month from today before the trial Court or will pay directly to the landlord, the decree under challenge shall not be executed till 1st of June, 2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of their tenancy in the trial Court or pay directly to the landlord.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

Scd